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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BEFORE THE HONORABLE RICHARD SEABOLT

DEPARTMENT 18

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ANTHONY HERNANDEZ

VALADEZ,

Plaintiff,

No. 22CV012759

vs.

JOHNSON & JOHNSON, et

al.,

Defendants.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
(CMC Hearing)

Thursday, April 27, 2023

Full Session

Reported by

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P R O C E E D I N G S

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Thursday, April 27, 2023 - 3:03 p.m.

(Full Session)

THE COURT: Good afternoon.

MR. SATTERLEY: Good afternoon, Your Honor.

MS. PRZETAK: Good afternoon, Your Honor.

THE COURT: Call Valadez v. Johnson & Johnson.

Do we have everyone's appearances?

MR. SATTERLEY: Yes -- well, I see Ms. Brown is on the computer and -- Alli Brown is there, and I saw Bryan King was here. I don't know if there are other lawyers for J&J or LTL joining us.

And Designated Defense Counsel is, obviously, here in person.

THE COURT: Sure.

MS. BROWN: Good afternoon, Your Honor. I think that's it for J&J and LTL, and thank you very much for taking us first.

THE COURT: No problem.

MR. SATTERLEY: So, Your Honor, Joe Satterley on behalf of Mr. Valadez.

Go ahead.

MS. PRZETAK: Good afternoon, Your Honor.

1 Laura Przetak appearing as Designated Defense Counsel.

2 THE COURT: Good afternoon, Ms. Przetak.

3 MR. SATTERLEY: And since some counsel is
4 participating remotely, I've emailed around what I am
5 going to tender to Your Honor to all J&J and LTL
6 counsel.

7 This is a calendar, and I wanted to
8 give Your --

9 And here's a copy of Ms. Scoggins as well.

10 THE CLERK: I'll be right there, sir.

11 MR. SATTERLEY: -- give Your Honor an update on
12 what's going on.

13 As you recall, last week it was defendant's
14 position that we can only proceed against J&J and not
15 LTL. We have now clarified that. Judge Kaplan has
16 issued two separate orders, one earlier in the week and
17 then one today, that the stay is lifted to all
18 previously protected parties and the debtor.

19 THE COURT: At least for this case.

20 MR. SATTERLEY: Just for this case, exactly.
21 All protected parties for all the other cases, but the
22 debtor still -- but there is a separate motion to
23 dismiss that we'll have to have heard on other cases.

24 What the Court instructed me to do is return
25 back on the 3rd to report back to Judge Kaplan the

1 status of outstanding discovery.

2 And so what I did immediately last Thursday --
3 well, I did it Thursday, when I was here. I told Your
4 Honor the depositions that were cancelled because of
5 the second bankruptcy. We got those back on calendar.
6 Been meeting and conferring every day, almost multiple
7 times a day with defense counsel.

8 This calendar, which I've tendered to Your
9 Honor, you will see that yesterday Dr. Egilman's
10 deposition was completed, his second day of deposition.
11 They finished his deposition this morning.

12 Dr. Dodson's deposition was completed.

13 Right now, the second treating doctor at
14 Stanford, she's being deposed right now, Dr. Roy. Her
15 deposition was previously scheduled twice, cancelled
16 once because defense counsel had a problem -- conflict,
17 personal conflict, and then, second, because of the
18 filing. So this deposition is ongoing.

19 Tomorrow morning, I will depose Target, their
20 PMQ/COR.

21 Then next week, all depositions of plaintiff's
22 witness will be complete before I appear before Judge
23 Kaplan on the 3rd.

24 So all of our depositions will have been
25 produced, deposed, and so -- and we were hopeful last

1 Thursday that we would likewise be able to depose all
2 defense witnesses before the 3rd as well.

3 So what happened was every day, I was bugging
4 the defendants, give me dates for deposition.

5 THE COURT: I don't doubt it.

6 MR. SATTERLEY: Yeah. And for the most part,
7 they ignored me until last night or this morning. I
8 got the last witness.

9 So now on calendar, you can see what we've
10 highlighted as blue are offered but not yet accepted.
11 They've offered these dates just last night or this
12 morning. The other ones that are not in blue have been
13 accepted by my office.

14 And so -- and what I've got to figure out is
15 Your Honor's schedule. And, obviously, we want to
16 either take these depositions, or maybe not, maybe
17 waive my right to take certain depositions, because my
18 most important thing is to get this case to trial.

19 So what I would ask --

20 THE COURT: Mr. Satterley, I recall much
21 earlier that you had offered to do that, to waive
22 discovery.

23 And let me add, you certainly know -- and I am
24 appreciative of the fact that Judge Kaplan is
25 appreciative of this -- not all of my cases are

1 preference cases.

2 But when it's a preference case and when there
3 is an order -- and the order in this case was issued by
4 Judge Lee some considerable period of time ago -- the
5 Court -- that is, all of my colleagues and I -- take
6 very seriously our obligation to get cases to trial
7 consistent with what the California legislature
8 requires.

9 So I'm doing everything possible to try to make
10 sure that, in fact, this case gets out to trial.

11 Let me also add, in part because some of the
12 counsel, Ms. Brown included, was in the Coit case. I
13 went back and looked, and the statutory preference was
14 ordered in the Coit case after this case, and that case
15 was resolved.

16 So the beginning and the end was within the
17 confines of this case, and yet, the injury in this case
18 and the plaintiff in this case is a much more -- he's
19 in a much more serious condition than I think almost
20 any statutory preference case that I have seen.

21 And the only reason this case didn't get to
22 trial is because Johnson & Johnson filed bankruptcy.

23 MR. SATTERLEY: Yeah.

24 THE COURT: Not once, but twice.

25 MR. SATTERLEY: And I appreciate Your Honor's

1 comments, and I think -- what I hope -- and I'm going
2 to convey this to Judge Kaplan -- is that sometimes
3 courts in other jurisdictions don't realize what
4 Alameda County does and what the preference statute
5 requires.

6 And so, you know, I tried cases for 12 years
7 now in Alameda County, and there's many times where
8 I've taken depositions in the middle of trial. I mean,
9 Judge Freedman in the Bankhead case in 2010 -- I took a
10 defense witness in the defense case.

11 So, I mean, I guess what I am going to ask Your
12 Honor, we can't set -- we can't say definitively we're
13 starting trial on a particular day until Judge Kaplan
14 gives us the go-ahead on the 3rd.

15 THE COURT: I understand that.

16 MR. SATTERLEY: And what I would request is
17 that we -- Ms. Clancy advised me that she's available
18 next week to argue any motions in limine.

19 They put in their CMC statement issues
20 regarding genetic testing, issues regarding Dr. Longo.

21 Ms. Clancy can be here or via Zoom Monday
22 through Thursday any day to argue any outstanding
23 discovery issues.

24 I will be traveling, most likely, on the East
25 Coast. I will participate via Zoom, to the extent I

1 can, but I need to be before Judge Kaplan.

2 THE COURT: Sure.

3 MR. SATTERLEY: And then what I'm
4 hopeful that -- well, if we can get as much as we can
5 resolved next week or the week of the 8th.

6 Last week, I said I wanted to try to do jury
7 selection the 8th. I'm willing to even push that jury
8 selection back to the 15th. But that's if the --
9 because even under their situation, where they are not
10 offering people until the 8th or the 11th or the 12th,
11 you know, the only one past the 15th is Dr. Sanchez,
12 who I have cross-examined, like, five or six times.
13 You know, what I need to verify what he's done in the
14 last two years, you know, but that shouldn't be a
15 lengthy deposition.

16 So what I ask from Your Honor today is to set
17 some time aside next week and maybe on the 8th or the
18 9th to handle all outstanding discovery issues. To the
19 extent -- to the extent there is any additional motions
20 with regards to expert, we can tee those up as quickly
21 as possible.

22 And then, different from what I said last week
23 about starting jury selection on the 8th, maybe
24 starting jury selection on the 15th or -- yes, on the
25 15th, so we can get this case moving.

1 I'm very concerned. My client's -- he's
2 progressing. He's been progressing every week and
3 every month since I've represented him. And it's my
4 interest to try to get this case resolved.

5 Thank you, Your Honor.

6 THE COURT: I do think the 15th probably is the
7 more practical target date, but I would like to try to
8 make sure that we are as firm as possible.

9 And I realize Judge Kaplan needs to make a
10 decision, and that's fine. This is an unusual
11 situation, but in fact, he controls my calendar, at
12 least this case.

13 MR. SATTERLEY: And I just -- I guess what I am
14 asking Your Honor --

15 MS. BROWN: Your Honor --

16 MR. SATTERLEY: Wait a second.

17 What I am asking, Your Honor is, because Judge
18 Kaplan is probably not familiar with the unique
19 circumstances of Alameda County and you've had a lot of
20 experience already with the asbestos docket, that Your
21 Honor, I think, can manage this case, as you did so
22 well when the stay was lifted before the second
23 bankruptcy, is to -- even if we don't start exactly on
24 the 15th, this calendar, I think, looks appropriate and
25 doable.

1 The last thing is, counsel never advised me why
2 these depositions had to go out several weeks. There
3 was no explanation, for example, why Matt Sanchez --

4 THE COURT: And aren't these the retailer?

5 MR. SATTERLEY: Well, Sanchez is an expert
6 witness for J&J. He used to work -- well, he still
7 works at RJ Lee outside of Pittsburgh. He was an
8 expert in Coit, so I deposed him in Coit. And so I
9 understand he moved somewhere to the West Coast, maybe
10 Utah or Colorado or somewhere closer by.

11 But there's no reason why a week ago, when I
12 asked for dates, I had to wait almost a full week and
13 then get a date several weeks out, you know.

14 So when --

15 MS. BROWN: May I be heard on this issue, Your
16 Honor?

17 MR. SATTERLEY: Yeah, as soon as I finish.

18 THE COURT: Just a minute, Ms. Brown.

19 MR. SATTERLEY: So what I am asking is Your
20 Honor to request defendants to advise the Court why
21 none of these depositions cannot occur sooner. That's
22 my final request, Your Honor.

23 THE COURT: So let me also just comment. I
24 don't know whether the compliments are deserved or
25 undeserved.

1 My principal concern is the California
2 legislature requires that cases be tried within
3 120 days of the order, which I take seriously. That is
4 a statewide obligation, and as it happens, this is the
5 most serious case I've seen.

6 Please go ahead, Ms. Brown.

7 MS. BROWN: Thanks very much, Your Honor.

8 I think, first and foremost, what's important
9 to remember -- and I know Mr. Satterley has been
10 sending the orders and the transcripts -- there is a
11 stay on a trial in this case.

12 And so counsel is asking this Court to schedule
13 a trial in violation of Judge Kaplan's order.

14 I understand Judge Kaplan has given counsel the
15 opportunity to reargue the motion on the 3rd and again
16 on the 27th, but I would suggest to the Court that what
17 counsel is asking right now is -- currently contravenes
18 the order from Judge Kaplan.

19 Indeed, Judge Seabolt, Judge Kaplan, in his
20 remarks, expressed concern -- continuous concern about
21 allowing one out of the 80,000 or so cases to go
22 forward and that he would revisit that issue.

23 And so just first and foremost, Your Honor, I
24 respectfully submit that we are still in a situation
25 where Judge Kaplan has ordered that no trial go

1 forward.

2 And I understand counsel has the opportunity to
3 re-argue that this week and in three weeks, but that is
4 the current order from the bankruptcy court judge.

5 Notwithstanding that, it is certainly true that
6 Judge Kaplan lifted the stay as to J&J and LTL to allow
7 all discovery to move forward, and to that end, I want
8 to update the Court on everything we have been doing in
9 less than a week to accommodate that and to make sure
10 we are complying with Judge Kaplan's orders and, of
11 course, the order of your court.

12 THE COURT: So, Ms. Brown, let me interrupt
13 just momentarily.

14 That is not my reading of Judge Kaplan's order.
15 My reading of Judge Kaplan's order is we can't start
16 the trial.

17 MS. BROWN: No, sir.

18 THE COURT: And the way I read Judge Kaplan's
19 order is he said there would be a hearing on May 3rd
20 where he reserved the right to say we could go ahead or
21 not go ahead, and if it wasn't resolved by that time,
22 he would take it up on May 22nd, which suggests to me
23 that he may well say "Go ahead on May 3rd."

24 Given that, I don't see a problem with us
25 discussing when trial might begin. He certainly didn't

1 issue an order saying that we can't discuss my
2 obligation to comply with my statutory obligation to
3 get this case out to trial, which already has been
4 delayed by the bankruptcy stay, which I understand.

5 And I believe we have -- we certainly have been
6 in compliance. I think I'm still in compliance. I
7 don't see anything in Judge Kaplan's order that says
8 that we can't talk about when trial might begin in this
9 case.

10 It is true, we don't have the go-ahead to do
11 that. Frankly, my hope is that he gives us the
12 go-ahead on May 3rd.

13 MS. BROWN: Yes, Your Honor. I understand
14 that.

15 I was just clarifying that right now, Judge
16 Kaplan's order is that only pretrial activities go
17 forward and that, obviously, he has not yet ruled on
18 the ability for a trial to go forward.

19 THE COURT: We might be saying exactly the same
20 thing --

21 MS. BROWN: I think we are, Judge.

22 THE COURT: -- except that I thought you were
23 suggesting that I was acting improperly by talking
24 about when we might start trial.

25 MS. BROWN: No, certainly not. And I didn't

1 mean to suggest the Court was doing anything improper.

2 I did just want to reiterate from our point of
3 view on behalf of my clients that there was a very
4 clear ruling that as of right now, there is no ability
5 for a trial to go forward.

6 I understand the Court and Mr. Satterley are
7 engaging in contingency planning, but I was simply
8 reiterating what that order was as to the ability for a
9 trial to go forward.

10 THE COURT: Sure. All right.

11 MS. BROWN: Your Honor, just to respond to
12 everything that we are doing under the confines of the
13 current order to proceed with pretrial, we tentatively
14 scheduled ten depositions in the last two -- in the
15 next two weeks.

16 We accepted seven depositions of plaintiff's
17 experts. Dr. Egilman was completed yesterday.
18 Dr. Dodson was completed today. Dr. Roy is in progress
19 right now. Drs. Johnson, Felsher, Backhus, and Abraham
20 are all now on the schedule.

21 We have offered dates for five of our
22 witnesses -- Mittenthal, Barlow, Sanchez, Dolan and
23 Chirieac -- to be scheduled for next week or the
24 following week.

25 Your Honor, we believe there is work on four

1 motions to be done, and as the Court saw, we put a
2 number of them on our agenda for today.

3 First of all, Your Honor, we would ask for a
4 briefing schedule on our motion to compel Dr. Longo's
5 PLM slides which, you will recall, Mr. Satterley had
6 represented to the Court existed or didn't exist or
7 might have been damaged. I think where we landed is
8 that they don't exist.

9 But we moved to compel. We respectfully
10 request a briefing schedule on that or, in the
11 alternative, the Court had suggested perhaps a
12 supplemental deposition of Dr. Longo would be
13 appropriate, and we would like to meet and confer on
14 that as well.

15 Your Honor, since the last time we saw you,
16 plaintiffs have filed an opposition to the motion to
17 compel limited genetic testing, and as we indicated to
18 the Court we would seek the ability to file a short
19 reply to that, Your Honor.

20 It seems as though since the last time we've
21 been before you, despite plaintiff's objections on
22 privacy concerns, Mr. Valadez has undergone some
23 genetic testing, which was included in their
24 opposition, and so we would like the ability to respond
25 to that.

1 Separately, Dr. Felsher submitted a declaration
2 in support of that opposition and he is not being
3 deposed until Monday.

4 I know the Court has been clear in the past
5 that if a declarant issues a declaration, we would have
6 are the opportunity to question that at a deposition.

7 And so we could quickly turn around, Your
8 Honor, a very short reply. We request the ability to
9 do that by Wednesday.

10 The genetic issues in this case, Your Honor,
11 are critical, particularly in a case of pericardial
12 mesothelioma, one of the most rare types of
13 mesothelioma.

14 And then, Your Honor, we need to respond to
15 plaintiff's trial brief regarding fair trial procedures
16 in light of indemnity agreements, which we are putting
17 together right away and will get to the Court in short
18 order.

19 Additionally -- and I think my colleague,
20 Mr. King, will address this -- we have a motion for
21 summary adjudication of plaintiff's fraud causes of
22 action.

23 And we are also, Your Honor, working swiftly to
24 respond and provide 13 sets of objections and
25 counter-designations to plaintiff's deposition

1 designations.

2 And then we have a schedule whereby we agreed
3 after the final transcripts are available, we would
4 have a certain number of days to do deposition
5 designations on those, and we believe that implicates
6 five additional witnesses.

7 So certainly, we are actively engaging in
8 discovery in this case in -- in conformance with Judge
9 Kaplan's lifting of the stay and, of course, with your
10 orders, Judge, with what we understand the Court, no
11 doubt, takes very seriously the preference in this
12 case.

13 But we would ask if we could get some
14 resolution on the briefing schedules, particularly for
15 the motion to compel the PLM slides and the genetic
16 testing. Both of those, we believe, are critical
17 issues to the trial in this case.

18 MR. SATTERLEY: May I respond, Your Honor.

19 THE COURT: Of course.

20 MR. SATTERLEY: I've got suggestions.

21 So first of all, we are going to respond to the
22 Longo motion. Your Honor is going to find out that
23 their motion is without merit. With Dr. Longo, what
24 they do is they grab onto something and think they've
25 got something, and they don't.

1 I mean, the bottom line is, they've known PLM
2 testing doesn't last. Within a matter of days, it's no
3 longer usable, can't be used. They know that by
4 Dr. Sanchez and by many other experts, Mickey Gunter,
5 their other expert on this.

6 But we'll file a response on that tomorrow, and
7 we can argue it any day next week that Your Honor deems
8 appropriate.

9 On the genetics issue, we filed our opposition
10 last Monday -- or this past Monday, and we think it's
11 ripe. I thought they suggested earlier they were going
12 to file a response today or tomorrow.

13 I have no problem if they want to file
14 something on Wednesday, but I suggest if they do that,
15 we should argue this on Thursday, the 4th.

16 THE COURT: As it happens, I was going to
17 suggest, part of it, looking at your deposition
18 calendar, Thursday is open. We have been meeting on
19 Thursday.

20 Frankly, what I would like to do is to kind of
21 work backwards for that as a target date to try to get
22 everything that is fully briefed argued next Thursday
23 afternoon, and that which isn't fully briefed, try to
24 make sure that it is fully briefed.

25 MR. SATTERLEY: Yes, Your Honor.

1 With regards to the motion for summary
2 adjudication on the fraud cause of action, that has
3 been decided in the sense that Bader is a published
4 opinion affirming a finding of fraud under
5 substantially similarly facts and circumstances.

6 And I don't even know if I have seen a motion
7 for summary adjudication that's been filed.

8 THE COURT: I don't think I have seen one.

9 MR. KING: I can address that, if you like.

10 The summary adjudication motion was timely
11 filed. Your office, Mr. Satterley, filed an
12 opposition.

13 MR. SATTERLEY: Well, good. Well, good. Your
14 Honor has all the briefing, then.

15 But I think if we -- I hope we cited to Bader.
16 And I don't know exactly when Bader was decided in
17 conjunction with the response to summary adjudication.

18 But I think that if that's fully briefed, then
19 it can be argued next Thursday, if not beforehand.

20 THE COURT: Mr. King, you're obviously ahead of
21 both me and Mr. Satterley. Was there a hearing date
22 set?

23 MR. KING: So what happened, Your Honor, is
24 obviously, and convenience to the Court, the hearing
25 had been set, I believe, for April 13th, and obviously,

1 we received a few emails from, I believe the Court's
2 research attorney.

3 The motion was reset for June 13th. That was
4 the first available date on calendar. The reply papers
5 were all filed today.

6 And so if the Court would like to argue the
7 motion next Thursday, since the motion for summary
8 adjudication is fully briefed, obviously -- I won't get
9 into the argument, but obviously, we're going to
10 disagree with Mr. Satterley's interpretation of Bader.

11 THE COURT: I assume so.

12 MR. KING: But what my point is, Your Honor, is
13 that the motion is fully briefed. There was a
14 reservation for June 13th, which was the first
15 available date.

16 But if the Court would like to have that motion
17 heard at next Thursday's CMC, we would be prepared to
18 argue or not argue the motion, I guess, depending upon
19 the Court's tentative ruling.

20 I can also send courtesy copies of the reply
21 papers to the research attorney that has emailed us.
22 Whatever the Court would like, we'll be ready to go
23 next Thursday on a motion for summary adjudication.

24 THE COURT: Why don't we plan on that.

25 MR. SATTERLEY: Can we do it -- instead of

1 doing at 3:00 Thursday, can we do it earlier, 1:30 or
2 2:00, just so Your Honor has sufficient time.

3 If we're dealing with genetics, if we're
4 dealing with Longo, if we're dealing with motion for
5 summary adjudication, that seems to me that may take
6 more than just an hour.

7 THE COURT: That's fine.

8 MR. KING: And, Your Honor, with respect to --

9 THE COURT: It's the court staff, though.

10 MR. SATTERLEY: After lunch, though, a long
11 lunch break.

12 THE COURT: Clearly, after lunch. Why don't we
13 set it for 1:30 on Thursday. Is that okay?

14 THE CLERK: That's fine, Your Honor.

15 Can I please get the reservation number or the
16 last four of the reservation? And if you do not have
17 it, if you could please email it to Department 18 so
18 that I can properly reset it.

19 THE COURT: Mr. King, did you hear
20 Ms. Scoggins.

21 MR. KING: Yes, I did.

22 And, Ms. Scoggins, if you give me 45 seconds --
23 I'm on File & Serve -- I can give you the reservation
24 number, which is on the moving papers. So if you just
25 give me just a few seconds here...

1 Of course, File & Serve timed out because I
2 hadn't looked at it.

3 So right now, I will give you the reservation
4 number.

5 While I do that, Your Honor, we did file a pro
6 hac vice application on behalf of Jessica Davidson. We
7 sent courtesy copies of the ex parte with shortened
8 time to have that heard today.

9 Mr. Satterley and his office had not opposed
10 the motion. She was admitted in Coit, and she's
11 scheduled to help facilitate the expert discovery
12 schedule by, I think, taking of a deposition next week.

13 So we would just ask that the Court grant the
14 unopposed pro hac vice application of Jessica Davidson.

15 MR. SATTERLEY: I don't object.

16 THE COURT: I was going to say, as we have done
17 in many earlier status conferences in this case, as
18 long as it's not opposed, I want to make sure all
19 parties are represented by counsel of their choice.

20 So I don't think we need anything more than
21 just to have a minute order reflect that Ms. Davidson's
22 pro hac vice application is granted.

23 MR. KING: I appreciate it, Your Honor.

24 And for Ms. Scoggins, do you need the entire
25 reservation number, or do you just need the last four?

1 THE CLERK: Just the last four.

2 MR. KING: The last four numbers are 2414, and
3 it was scheduled for June 13th at 3:00 p.m.

4 THE CLERK: Thank you.

5 MR. SATTERLEY: Just so the record is clear,
6 Your Honor -- and I don't object to Ms. Davidson -- J&J
7 and LTL have now, I think, 11 or 12 attorneys working
8 on this case.

9 And the only reason I make that statement is
10 because I've had to offer Dr. Abraham for four
11 different dates for them to accept. And so they
12 finally accepted Dr. Abraham next Tuesday on the
13 condition that I not object to Ms. Davidson.

14 I'm not objecting for that reason and for other
15 reasons as well. I have been working very, very hard
16 to get this case -- every deposition set before I go
17 see Judge Kaplan next week.

18 THE COURT: All right. Well, that's good.

19 MR. KING: One last question, Your Honor, with
20 respect to the Dr. Longo motion to compel.

21 Mr. Satterley just stated that he was going to
22 be filing -- I believe you said, Mr. Satterley, you
23 said you're filing your opposition tomorrow.

24 Obviously, we would request to have an
25 opportunity to file a reply brief to the motion. Would

1 Tuesday by close of business be sufficient for the
2 Court?

3 THE COURT: That seems fine.

4 MR. KING: Thank you, Your Honor.

5 THE COURT: And it seems to me another pending
6 issue that I don't think is set is the motion for
7 genetic testing.

8 Can that also be heard next Thursday?

9 MR. SATTERLEY: Sure. I think that we talked
10 about earlier they are going to file their opposition
11 on Wednesday, the 3rd, and then we can argue that on
12 the afternoon of the 4th. That's fine with the
13 plaintiff.

14 THE COURT: Their reply on the 3rd?

15 MR. SATTERLEY: Their reply will be on the
16 3rd -- I'm sorry -- because we filed our opposition on
17 the 24th. And so if they file their reply on 3rd, then
18 we can argue it on the 4th.

19 THE COURT: Is there any way we can get the
20 reply a little bit earlier than the day before the
21 hearing?

22 MS. BROWN: Your Honor, we can certainly try.
23 The issue is just Dr. Felsher did a declaration in
24 support of their opposition, and he's being deposed on
25 Monday. And so just in terms of getting that

1 transcript, we can certainly endeavor to get it to the
2 Court as early on the 3rd or even late on the 2nd, if
3 that would help.

4 THE COURT: That would help.

5 MS. BROWN: Sure.

6 THE CLERK: And the motion that's being
7 referenced now, is there a reservation for that one,
8 the motion to be heard on the 4th as well?

9 MR. SATTERLEY: I don't know that they actually
10 got a reservation. I don't know if they did or not.

11 Did you guys get reservations or just filed the
12 motion because we were so close to trial?

13 I don't know.

14 MS. BROWN: I defer to Mr. King on that. I
15 don't know the answer.

16 MR. KING: Just give me a few minutes, and I'll
17 check on the numbers as well.

18 So the motion to compel Dr. Longo's PLM slides
19 or, in the alternative, a supplemental deposition, the
20 last four digits of that reservation number are 1957.

21 THE CLERK: Thank you. And what was the date
22 of that motion?

23 MR. KING: April 28th was the date of the
24 motion.

25 And then with respect to the genetic testing

1 motion, let me just check on that.

2 THE CLERK: So then --

3 MR. KING: Go ahead.

4 THE CLERK: So that I am clear, the motion
5 reservation that you just gave me, is that one being
6 continued to next week?

7 THE COURT: Yes.

8 MR. KING: Yes. That's my understanding, yes.

9 THE CLERK: And there's another one?

10 MR. KING: The motion to compel the limited
11 genetic testing, the last four digits of that
12 reservation number are 0961, and the original
13 reservation date for that was April 6th.

14 THE CLERK: Thank you.

15 MR. SATTERLEY: Your Honor, with regard to the
16 case, so that it's very clear, Judge Kaplan, if he
17 allows the case to be released from the stay next
18 Wednesday, on the 3rd, would this Court be able to
19 begin this trial somewhere around the 15th?

20 THE COURT: That's what I am planning on.

21 MR. SATTERLEY: Thank you, Your Honor.

22 THE COURT: This isn't entirely within my
23 control, but that's certainly my hope and plan. And I
24 don't have a conflicting trial.

25 MR. SATTERLEY: Excellent.

1 So we'll report that to Judge Kaplan on
2 Wednesday when I'm before him.

3 So the final issue that I have for today is
4 whether or not Your Honor wants to inquire as to
5 defense counsel on some of these experts that are moved
6 out to the middle of May and these PMQ witnesses that
7 was, in essence, compelled by Your Honor back over a
8 month ago.

9 And we had those set right when the bankruptcy
10 was filed, so --

11 THE COURT: That's, frankly, what's concerning
12 me most, the PMQ depositions, which I think are all the
13 retailers. We went back and forth. There was an order
14 as to when they were to be set. We finally were able
15 to get dates. I assume that they've been fully
16 prepared.

17 Maybe they're as busy as experts, but somehow
18 the experts don't bother me as much because I know
19 experts have a lot of conflicting schedules and demands
20 on their time. But I am surprised and find it a little
21 frustrating that the retailers' PMQ depositions have
22 dragged.

23 MR. SATTERLEY: It looks like Walmart and Save
24 Mart are the two that's pushed out to the 11th and
25 12th. Obviously, if there's a legitimate reason why,

1 as opposed to just pushing it out, you know, but I've
2 been given no explanation.

3 THE COURT: Well, that's what happened last
4 time. We had a tentative date, and I realize --

5 MS. BROWN: Your Honor --

6 THE COURT: Ms. Brown, we can't both talk at
7 the same time.

8 MS. BROWN: My apologies, Judge. I was just
9 going to ask if I could be excused if we were moving to
10 the retailers. I was the one who had the conflict five
11 minutes ago. I didn't want to jump out without
12 permission.

13 My apologies. Thank you, Judge.

14 THE COURT: No problem.

15 My recollection is what happened last time --
16 and I think we were then set for April 17th -- is that
17 the retailer PMQ depositions wound up getting slid to,
18 like, the -- two or three days right before trial was
19 set to begin, which is far from ideal. And now the
20 trial has been further delayed, and I don't understand
21 why we're in essentially the same situation, where the
22 PMQs are right before the trial are starts.

23 MR. SATTERLEY: And if I could explain why
24 that's --

25 MS. TRELA: Your Honor, if we could be heard?

1 MR. SATTERLEY: If I can just explain with
2 regard to Target, because Target is tomorrow morning,
3 and I'm going to depose Target PMQ tomorrow. So
4 they're at least a little bit before trial.

5 I just got last night -- actually, I just saw
6 it for the first time today, Target has records
7 regarding my client and my client's purchase history.

8 Now, it only goes back two years, but that's
9 important documentary evidence that I am going to
10 inquire about.

11 THE COURT: Sure.

12 MR. SATTERLEY: And Mr. Valadez worked for
13 Target also, so they produced his personnel files just
14 for the first time last night.

15 So even though this case has been pending for
16 quite some time, I'm learning things about my client
17 the day before the deposition.

18 And I suspect Walmart or Save Mart or Safeway
19 may, likewise, have records regarding my client or my
20 client's mother because they have those cards that
21 you -- those Safeway cards.

22 And so I've got to get that earlier so that I
23 know what I am dealing with in this trial. I don't
24 want the trial to be delayed for that reason.

25 And as I said before, if I have to forgo

1 discovery, I would rather go to trial, but I would just
2 like some explanation on why we can't get these
3 depositions earlier.

4 THE COURT: Presumably someone representing one
5 of the retailers wanted to be heard. I'm happy to
6 hear.

7 Could you please state your name for the
8 record.

9 MS. TRELA: Good afternoon, Your Honor.
10 Rebecca Trela on behalf of the retailer defendants.
11 I'm with Barnes & Thornburg.

12 Can you hear me?

13 THE COURT: Yes.

14 MS. TRELA: Great. Thank you.

15 I just wanted to respond to some of the things
16 that have been said and have been noted about the
17 retailer defendants and the discovery, and I will start
18 at the end of what Mr. Satterley just said.

19 The Save Mart and Lucky documents were produced
20 weeks and weeks ago before the stay.

21 Here is what happened with respect to the
22 retailer PMQ depositions. Last Thursday, we were asked
23 to get new deposition dates immediately after Judge
24 Kaplan's ruling. We immediately reached out to all of
25 our clients to do so.

1 The very next day, we were able to provide
2 immediate dates for four of the six of those, the five
3 PMQs and one expert.

4 Those depositions, as Mr. Satterley said,
5 starts tomorrow with the Target deposition, and then I
6 believe it's Walmart, Safeway, and Albertsons next
7 week.

8 And then on Wednesday, we were able to finally
9 get the date for the other two of the six witnesses.
10 The earliest that they are available are May 11th and
11 12th.

12 As I understand how things have been shaping
13 up, even if Judge Kaplan does decide to lift the stay
14 in the case, that will occur prior to trial.

15 Oh, and Mr. Satterley did ask us to see if an
16 earlier date was available for Dr. Kinsey than we had
17 already offered. That was the 8th. And we did check,
18 and the 8th is the earliest that she is available. But
19 if there are conflicts with other depositions on that date,
20 we can look for another one.

21 THE COURT: I appreciate that.

22 MR. SATTERLEY: Well, counsel just said Walmart
23 is next Wednesday. I have Walmart scheduled for the
24 11th.

25 MS. ASCIONE: Your Honor, there was just a

1 little confusion. Albertsons and Safeway is next week,
2 and then Walmart and Save Mart were the additional
3 days.

4 THE REPORTER: Could you state your name for
5 the record, please.

6 MS. ASCIONE: Yes. Hi. Alexandra Ascione --
7 I'm also with Barnes & Thornburg -- for the retailer
8 defendants.

9 MR. SATTERLEY: And then the last issue is just
10 Sanchez. Why is Matt Sanchez -- he's their expert that
11 works -- 90 percent of his work is litigation. He's
12 testified to that. I cross-examined him, I think, 6,
13 7, 8 times.

14 And there's no explanation whatsoever why --
15 when last Thursday, the 20th, we requested dates -- why
16 his first available date is almost a month later,
17 May 17th. No explanation was given, and he was just --
18 we were just given that date either last night or this
19 morning.

20 THE COURT: As I understand, he's J&J.

21 MR. SATTERLEY: He's J&J. And Mr. King is
22 still here on the line for J&J.

23 MR. KING: Well, Your Honor, to your point,
24 expert depositions, experts have busy schedules. And
25 we asked Dr. Sanchez for his first available date for

1 this case, and he provided us with May 17th.

2 I mean, I don't have any further explanation
3 other than that we requested dates from our experts.
4 We requested them, that they provide us dates as soon
5 as they could. And you know, within a week, we
6 provided dates for all four of our outstanding experts
7 as well as getting the PMQ back on calendar for the 2nd
8 of May.

9 In less than seven days, we got five
10 depositions scheduled in less than a month. And so,
11 quite frankly, I don't think that's, you know, anything
12 that should be sort of discounted.

13 So I don't have an explanation as to why that's
14 Dr. Sanchez's first date. He's an expert witness. He
15 has, you know, a busy schedule, and that's the first
16 date he gave us.

17 We're not -- I feel as if the suggestion is
18 being made that experts are intentionally being
19 withheld from deposition for nefarious reasons and,
20 quite frankly, that's just not the case, Your Honor.

21 We've done a lot of work since last Thursday's
22 CMC and since Judge Kaplan's order was -- actually came
23 into effect earlier this week to get all of these
24 depositions on calendar in a matter of three weeks.

25 THE COURT: Listen, overall, it does seem to me

1 that both sides have made a lot of progress to try to
2 get these depositions set up.

3 MR. SATTERLEY: Can I have a different request,
4 then, because -- so Sanchez -- Your Honor, so Sanchez
5 is their key witness. Sanchez is their only witness
6 they've got to say they've tested --

7 THE COURT: He's with RJ Lee?

8 MR. SATTERLEY: He's with RJ Lee.

9 And RJ Lee always says there's no asbestos even
10 when there is asbestos, or there's contamination or
11 some other.

12 So he's their key witness. When the trial was
13 set on April the 17th, they put him on April the 14th,
14 the day before trial. It was the last possible day.

15 So with the second filing, they have not only
16 taken that off, they have not disclosed any of his
17 writings, any of his discoverable writings, any of his
18 reports that he has done. So in essence --

19 And they take the position that they don't have
20 to do that until three days, 72 hours, before his
21 deposition, even though the Code is different and
22 requires discoverable writings and reports earlier.

23 So what I request Your Honor to order is for
24 them to immediately, by tomorrow, produce all of
25 Dr. Sanchez's -- because I haven't deposed him on a J&J

1 case since the first bankruptcy, and so I have no idea
2 what, if any, testing he's done since the Prudencio
3 case, which I tried before Judge Kaus in 2021 because
4 that was the last. So it's been close to two years.

5 And so what I am afraid of is, under this
6 current schedule, on the 17th when, hopefully,
7 possibly, we are in jury selection and I'm deposing --
8 or a couple of days beforehand they are going to
9 produce a whole bunch of new opinions, new reports
10 that's going to cause issues.

11 So I think it's reasonable for Your Honor to
12 tell them to go ahead and produce all of Sanchez's
13 reliance materials, because they would have had to
14 anyway before the 14th by the 11th or 10th.

15 THE COURT: Let me hear from Mr. King about
16 that.

17 MR. KING: I just don't think that request
18 really is meritorious at this point, Your Honor.

19 I mean, his deposition was not scheduled for --
20 it was ten days after the initial TRO went into place.
21 Right?

22 So in terms of what the Code requires, the Code
23 of Civil Procedure requires that he produces his
24 materials within three business days of his deposition.

25 As Mr. Satterley has pointed out, he has taken

1 Dr. Sanchez's deposition in more than a handful of J&J
2 cases. He's deposed him multiple times. He's taken
3 his trial testimony.

4 So to the extent that he is now being --
5 wanting to be required to produce materials 17 days
6 earlier than the Code of Civil Procedure requires --

7 THE COURT: Mr. King, don't -- Mr. Satterley
8 may have wanted the discoverable writings produced
9 tomorrow. That doesn't seem reasonable to me.

10 On the other hand -- frankly, I said it first.
11 I realize that experts have very busy schedules. And
12 you said he has a very busy schedule for depositions.
13 We all understand that.

14 But it does seem to me that we could get
15 discoverable writings in advance because, frankly, the
16 deposition is being conducted -- frankly, I hope, we'll
17 be in the middle of trial by then, or at least have
18 started jury selection.

19 So I guess my thought would be, could we get
20 his discoverable writings something like seven to ten
21 days before the deposition? Presumably, he's worked on
22 this case for some significant period of time.

23 MR. KING: Well, I can't say what he was during
24 the -- after the bankruptcy was filed on the 5th. I
25 mean, quite frankly, I would imagine most experts would

1 pivot to other pending cases that they have that are
2 not being stayed due to bankruptcy. I don't want to
3 speak for Dr. Sanchez on that point.

4 With respect to when his documents would be
5 due, they would be due on Friday, May 12th, which is
6 before when the Court has suggested that jury selection
7 would begin. So his materials wouldn't be produced in
8 the middle of trial.

9 And I don't think it can be overstated, Your
10 Honor, that this is not some new novel witness where he
11 is going to have dozens of new reports that have never
12 been seen before.

13 I don't think it can be discounted, the fact
14 that he has been deposed by the Kazan law firm dozens
15 of times and he's been cross-examined during trial.
16 This isn't -- this isn't some new novel witness that's
17 being put up.

18 I understand the Court's concern, and so, you
19 know, in the spirit of trying to cooperate, you know,
20 we could move that maybe a couple days back to
21 May 10th, Your Honor.

22 THE COURT: Any flexibility would be
23 appreciated on my part because, you know, I -- and,
24 look, like a lot of things, I want to try to balance
25 people's, you know, rights and problems and to be

1 sensitive to the scheduling conflict.

2 On the other hand, having a key witness --
3 expert witness being deposed after when I hope jury
4 selection has begun is far from ideal.

5 And it probably goes both ways. Mr. Satterley
6 has deposed him before. Frankly, I'm sure that what
7 Mr. Satterley is most interested in is, what new work
8 has he done.

9 MR. SATTERLEY: That's right. That's right.

10 So, Your Honor, all that argument about we've
11 deposed him dozen of times -- I don't think we've
12 deposed him dozens of times. We deposed in each of our
13 cases, which last week, in bankruptcy, they were making
14 fun of me for not having very many cases.

15 Ms. Brown said I only had 11 cases, and so I
16 shouldn't get any special treatment. Now they're
17 telling me I've deposed him dozen of times.

18 But my point is -- Your Honor hits the nail on
19 the head -- is there anything new? They can certainly
20 inquire as to him -- Dr. Sanchez -- within the next
21 several days, is there anything new?

22 They know. They know what they've sent to him,
23 because they get everything -- Dr. Sanchez gets
24 everything from their attorneys.

25 So is there anything new, and if so, how much

1 is it, and when can we get it?

2 It just doesn't seem fair to intentionally put
3 their most important witness on asbestos in the product
4 after the potential start of the trial and after jury
5 selection, because it just may throw things -- it may
6 cause problems.

7 THE COURT: So I'm not sure I'm going to be
8 able to do anything more than what Mr. King has offered
9 other than encourage you to meet and confer to see if
10 there isn't a possibility of getting the discoverable
11 writings produced earlier than the 10th. Certainly, no
12 later than the 10th.

13 MR. KING: Your Honor, let me just say this.
14 This all may be a moot issue if, on the 3rd, there is
15 no new ruling from Judge Kaplan. Because if there's no
16 new ruling on the 3rd from Judge Kaplan, all of this is
17 moot in terms of his deposition occurring after jury
18 selection has started, because, as Ms. Brown pointed
19 out earlier, it's the universe that stands today. This
20 trial is stayed in this matter until at least
21 June 16th.

22 So this whole issue may be moot, and we'll find
23 on Wednesday, the 3rd, if this issue is heard. So
24 we'll be back before Your Honor after we find out if
25 this is even an issue to discuss at all.

1 In the meantime, I will inquire of Dr. Sanchez
2 if it is possible to produce materials beyond what is
3 required by the Code of Civil Procedure, which is three
4 business days.

5 So I would say that this is a moot issue
6 because we are arguing in a vacuum as to a trial
7 starting on the 15th, when as we sit here today, trial
8 cannot begin until June 16th, and Dr. Sanchez's
9 deposition on the 17th would be 30 days before the
10 beginning of a trial.

11 So I think it's a bit moot, and I would suggest
12 that we talk about this at next week's CMC, Your Honor.

13 MR. SATTERLEY: If I can just respond very
14 briefly?

15 The Code of Civil Procedure requires
16 discoverable writings to be produced either at the time
17 of the disclosure, 15 days before trial, or when they
18 are created, not three days beforehand.

19 The three days beforehand is additional
20 materials, like reliance list, correspondence,
21 invoices, things of that nature.

22 So counsel is a hundred percent incorrect when
23 discoverable writings are due.

24 And counsel is also incorrect when he said this
25 might be moot, because Judge Kaplan says in his orders

1 that we should get the case ready for trial.

2 And so I will agree to meet and confer. I know
3 Your Honor is not inclined to do anything additional.
4 And to the extent that we cannot resolve it, we may
5 have to address it again next Thursday at the next --
6 you know, next time before Your Honor.

7 THE COURT: Well, the only thing to add to
8 that, I think, is I thought I heard Mr. King say that
9 he believed that he could get Dr. Sanchez's materials
10 by the 10th.

11 I don't want there to be backing off from that.
12 If he can get it earlier, that's great, but I don't
13 want it later.

14 I'm also more optimistic than perhaps Johnson &
15 Johnson's counsel is about what Judge Kaplan will do on
16 May 3rd.

17 My reading of his orders and his transcripts,
18 he has always treated this case with the seriousness
19 that I think it deserves.

20 Now, there is no question, he's looking at it
21 from a different perspective. He's a bankruptcy judge,
22 and I've seen him -- it seems appropriate to me that he
23 is talking about, is it right to pick amongst many
24 claimants.

25 But from my perspective, I have a statutory

1 obligation to get cases where there's been a
2 determination that -- by medical professionals -- and
3 there were two treating physicians in this case, an
4 oncologist and another treating physician -- who said
5 that Mr. Valadez was not likely to survive six months.

6 And in that setting, if there were no
7 bankruptcy, I have failed in my duties that the
8 California legislature have set out, which is one of
9 the reasons, together with the fact that this is the
10 most serious case that I have seen.

11 So I am more hopeful that, in fact, Judge
12 Kaplan is going to give us the go-ahead on the 3rd.
13 And, frankly, I want to plan for that.

14 MR. SATTERLEY: With that being said, Your
15 Honor, I have nothing further from the plaintiff to
16 have the Court address today.

17 I don't know if other counsel has any issues.

18 THE COURT: Well, we've addressed most of the
19 issues. I need to be sensitive, because I got a note
20 that our deliberating jury may have a verdict.

21 MR. SATTERLEY: Oh, you may have a verdict.
22 Okay.

23 So I don't think J&J has anything else either.

24 THE COURT: Well, if there are -- I mean, we
25 addressed the pro hac vice application.

1 I think we set hearing dates largely next
2 Thursday for at least three motions; the Dr. Longo
3 motion, the genetic testing -- and as I recall, there
4 was a third one.

5 MR. KING: The motion for summary adjudication,
6 Your Honor, as to fraud.

7 THE COURT: That's right. So I think we
8 covered what we need to do.

9 If there's something really urgent that merits
10 further delaying, perhaps, my deliberating jury --

11 MS. ASCIONE: Just one more thing, Your Honor,
12 for the retailers.

13 We also had MSJs that were pending before the
14 stay that also need to be reset.

15 I would just maybe suggest, since there's
16 already three hearings next Thursday, that maybe our
17 MSJs could go the following week.

18 MR. SATTERLEY: Why don't we meet and confer.
19 You've got a jury out there.

20 We'll meet and confer with the retailers to try
21 to figure out a time.

22 MS. ASCIONE: I just wanted to make sure --

23 THE COURT: And I appreciate you raising that.
24 And it does.

25 My default for this case has been to try to

1 deal with as much as possible on Thursday afternoons,
2 so that's a reasonable proposal.

3 MS. ASCIONE: Thank you, Your Honor.

4 MR. SATTERLEY: Thank you, Your Honor.

5 THE COURT: All right. Thank you very much.

6
7 (Whereupon, the proceedings
8 were concluded at 3:54 p.m.)
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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ALAMEDA)
4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time and place therein
8 specified;

9 That said proceedings were taken before me at said
10 time and place, and was taken down in shorthand by me,
11 a Certified Shorthand Reporter of the State of
12 California, and was thereafter transcribed into
13 typewriting, and that the foregoing transcript
14 constitutes a full, true and correct report of said
15 proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand on April 28, 2023.
18
19
20

21 
22

EARLY K. LANGLEY, CSR No. 3537

23 State of California
24
25